Filed 2/15/11 Michael R. v. Superior Court CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MICHAEL R., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B228508 (Los Angeles County Super. Ct. No. CK76402)

ORIGINAL PROCEEDING; petition for writ of mandate. Albert Garcia, Juvenile Court Referee. Petition denied.

Michael R., in pro. per., for Petitioner.

No appearance for Respondent.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Melinda White Svec, Deputy County Counsel, for Real Party in Interest.

Michael R. (Father) filed a petition for extraordinary writ after the dependency court terminated reunification services with respect to his son P.H. (P., born Oct. 2008) and set the matter for a Welfare and Institutions Code section 366.26 hearing.[1] He contends the court erred when it concluded that the Los Angeles County Department of Children and Family Services (DCFS) provided Father with reasonable services and there is insufficient evidence to support the court's order terminating reunification services. Father also asserts he received ineffective assistance of counsel and the court was biased and prejudged the case. Finding no error, we deny Father's petition.

FACTUAL AND PROCEDURAL BACKGROUND

On February 19, 2009, DCFS learned that four-month-old P. had been brought into a hospital emergency room and found to have suffered a subdural hematoma. A skeletal survey revealed that P. had also sustained multiple rib fractures and a fractured tibia. The child's mother, F. H. (Mother), expressed surprise at the results of the survey and suggested that it be reviewed by another doctor. She claimed not to know how P. was injured. Later, however, she revealed that P. had fallen off a bed approximately two months before. Father professed to have no knowledge as to how his son was injured. He thought it was possible that P. was hurt by Mother, who sometimes swaddled the boy too tightly. DCFS was troubled by Mother's changing stories and the lack of an explanation that was consistent with the child's injuries. It filed a petition on P.'s behalf, alleging that he had suffered severe physical abuse and was at risk of suffering serious physical and emotional harm. (§§ 300, subds. (a), (b), & (e).) At the detention hearing, the court ordered DCFS to provide reunification services for the parents, including no cost/low cost referrals for programs and assistance with transportation. The parents were granted monitored visitation.

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[1] All further statutory references are to the Welfare and Institutions Code.

On February 26, the day of the detention hearing, Mother called and spoke to a social worker.[2] She stated that on January 8, 2009, she shook the baby "very hard" because he would not stop crying. Mother also admitted to dropping the child. She claimed that the incident on January 8 was the only time she had intentionally mistreated P. and that she had learned her lesson.

On March 17, 2009, Mother told another social worker that in early December she shook P. because he would not stop crying. According to Mother, "He cried for a while after I shook him and then fell asleep on his own. I didn't tell the Father. I never noticed anything wrong with the baby." Father informed the same social worker that he "had no clue" P. had been injured.

In the April 2009 jurisdiction/disposition report, the social worker expressed concern that it was not possible to ascertain which parent was responsible for P.'s injuries. Notwithstanding Mother's confession to one incident of violence, the evidence suggested that P. had been the victim of multiple incidents of abuse in light of the number of injuries he had suffered. The social worker found it difficult to believe that neither parent was aware P. was injured given his condition when he was seen by hospital staff.

On May 7, 2009, the court sustained the allegations in the petition and continued the matter for disposition to May 27. A supplemental report for the May 27 hearing informed the court that the social worker had repeatedly asked the parents to provide verification of their enrollment in parent education classes and counseling and had received none to date. Father spoke to a multidisciplinary assessment team counselor and claimed to have attended anger management and individual counseling sessions, even though they had not been ordered by the court. The assessor wrote, "[v]arious reports indicate that Father's statements have not been consistent."

At the May 27, 2009 disposition hearing, the court ordered that P. remain removed from his parents' custody. DCFS was to provide the parents with parenting classes and a licensed therapist for individual counseling to address case issues. In addition, Mother

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[2] It is not clear from the record whether Mother placed the call before or after the detention hearing. A later report stated that Mother called "from court."

was to receive anger management counseling. The parents were granted monitored visitation.

In the August 2009 interim report, the social worker wrote that although the parents said they were participating in some court-ordered programs, they had not yet provided written documentation. Neither had begun individual counseling. The monitored visits took place three times a week and their quality improved as P. appeared to be more interactive with his parents. At the August 2009 progress hearing, the court kept the existing orders in effect and continued the case for a November 24 review hearing.

In the report prepared for the November 2009 review hearing, the social worker noted Father told her that both parents had been regularly attending parent education classes at the Dixon Recovery Institute. Mr. Dixon, the director of the program, told the social worker that he felt both parents would benefit from a more extensive program. Given the severity of the abuse and neglect P. suffered, Dixon did not believe the basic program attended by the parents would provide the necessary tools they needed to reunite with their child. Dixon added that both parents should be receiving therapy from a licensed therapist. The social worker observed that neither parent had enrolled in court-ordered individual counseling with a licensed therapist, although she had provided both with referrals. Father claimed he and Mother were on a waiting list for counseling, but did not provide the name or address of the agency. The social worker had not received confirmation that Mother was participating in an anger management program. The parents were visiting P. regularly. The social worker informed the court that the parents were in partial compliance with the case plan.

In November 2009, the matter was set for a January 28, 2010 contested review hearing. The January 2010 report stated that the parents continued to regularly visit P. and parents and child interacted well. In December, the parents provided the social worker with certificates of completion of parent education and anger management programs. They still had not participated in individual counseling.

At the January 28 hearing, the court found DCFS was providing reasonable services and the parents were in partial compliance with the case plan. Prior orders remained in effect and the court ordered that visits were to remain monitored until such time as the parents enrolled in therapy. A July 29, 2010 review hearing was scheduled.

By the time of the April 2010 interim review report, the parents were attending individual counseling, although Father had missed two sessions. The therapist noted that neither parent mentioned any concerns or problems and appeared as though everything was fine. During a March monitored visit, the parents argued in P.'s presence and did not pay attention to the child. Although Father appeared to remain calm, Mother yelled and cursed. On several occasions, Mother left the visitation room and returned, swinging the door violently and narrowly missing P. The social worker decided to end the visit. Father volunteered to leave so that the visit could continue. Mother told the social worker that she and Father argued almost every day and what the social worker had witnessed was nothing in comparison to their daily quarrels.

The parents were receiving family preservation services, which included individual counseling. On June 9, 2010, a family preservation worker called the social worker. The preservation worker reported that she had gone to the parents' home to visit. When she arrived, the door to the apartment was open, Mother was outside and she told the worker she could not go in. As Mother attempted to close the door, the worker looked inside and saw marijuana and paraphernalia on the coffee table in the living room. When Father was informed of the situation, he yelled at the worker and said he did not want to speak with her. She left.

Father told the social worker that he and Mother used marijuana for medicinal purposes. When the social worker asked Father whether he had medical certification to use the drug, he claimed he had one that had expired and would renew it. The parents agreed to random drug testing and told the social worker the tests would return dirty.

On July 8, 2010, family preservation services were terminated because P. was still detained and continued services were contingent on the child living in the home. As a result, the parents were no longer able to utilize the therapist they had been seeing. The

therapist, Emily Dobluis, gave the parents a referral to another agency to continue counseling. Dobluis told the social worker the parents had begun conjoint counseling. She recommended that the parents participate in individual counseling as well, as they had personal issues they needed to address. She also said that the last time she saw the parents, Mother had a large black eye. When Dobluis questioned the parents, they laughed and claimed Mother had been struck by a board while working at a construction site. The social worker informed the court that the parents had not followed up on the counseling referrals Dobluis had given them.

For a time, the parents were going to Mommy and Me classes where they would interact with P. When Father told the social worker they needed transportation to the classes, the social worker reminded him that she had provided the parents with a bus pass. Father complained that the bus ride was too long. The parents stopped attending the classes and Father asked that future visits take place at the DCFS office, which was closer to their home. Visits continued to go well.

At the July 29, 2010 review hearing, the parents asked to set the matter in order to have the court hear their request for unmonitored visitation. The case was set for August 13, 2010.

As of August 13, the parents still had not found a therapist to begin counseling. After receiving information that the parents' visits with P. were appropriate, the court ordered that the parents be allowed one hour per week of unmonitored visitation. DCFS was given discretion to increase the length of the visits. The matter was continued to September 24, 2010, for a section 366.22 permanency review hearing.

In the report for the September hearing, the social worker wrote that the parents enrolled in counseling on September 16. By the time of the report, they had attended two sessions. The parents tested positive for cannabinoids on a number of occasions. Father also tested positive for opiate hydrocodone. The lab technician told the social worker that the parents' cannabinoids levels were very high and that Father's positive test for opiate hydrocodone was due to his ingestion of Vicodin. Father claimed to have prescriptions for a number of medications, including Vicodin, but did not provide the

social worker with written verification. When the social worker attempted to verify whether the parents had marijuana prescriptions, she learned they did not. She also discovered that Father had not seen his doctor in a year.

The social worker's report contained details of disturbing incidents that indicated the parents were having issues with anger management. On September 7, Father called the foster mother's home and spoke to her daughter to attempt to reschedule a visit. When told that the foster mother was not there, Father cursed at the daughter and hung up. On September 16, Mother left the social worker a message stating that she needed referrals to shelters because she could not take it at home any longer. Mother said the social worker had to return her call because the situation was an emergency. When the social worker was unable to reach Mother by telephone, she went to the foster home where an unmonitored visit was scheduled. She waited for the parents. When they arrived, she spoke to Mother, who said that she, Father, and his adult son had gotten into an argument the previous night. Mother claimed the situation was resolved. The social worker asked Mother how often she and Father fought. Mother acknowledged that they argued often; however, she denied their disputes ever got physical. Mother said she wanted to move out of the home.

According to the social worker, although the parents consistently visited P., they were not compliant with the plan for conjoint and individual counseling. The social worker observed that the parents' relationship was very unstable and unpredictable. She opined the parents did not understand the scope of P.'s needs and did not track his medical progress. She noted that although the parents had had 18 months of reunification services, they were not yet ready to provide P. with a safe home. She recommended that the court terminate reunification services and set the matter for a section 366.26 hearing.

On September 24, the case was continued to October 26, 2010, for a contested review hearing. The report prepared for the October hearing noted that Mother had moved out of the home. She had not provided the social worker with an address or telephone number. With respect to drug testing, the parents either failed to show or tested positive for cannabinoids. They were participating in counseling.

At the October 26 hearing, the social worker testified. Under examination from Father's counsel, she acknowledged Father's therapist was recommending that P. be returned to Father. The social worker did not give the recommendation much weight because the therapist had been seeing the parents for less than two months and had never seen them interact with P. She said P. would be at risk if returned to the parents because they did not understand what providing daily care for the child would entail. The parents had briefly progressed to unmonitored visitation for two hours a week; however, due to their missing drug tests and visits, the visits were again monitored. The social worker stated she was concerned about the parents' drug use for two reasons. They did not inform anyone at DCFS of their use (a family preservation worker observed marijuana in the parents' apartment in June 2010 and told the social worker) and the social worker feared they would visit P. while under the influence.

Father testified he had missed drug tests due to transportation problems and, on one occasion, because he was "very, very, very depressed." He failed to visit due to transportation problems and the foster parent's inability to find time to reschedule missed visits. Father stated that he had a prescription for marijuana as a result of being HIV symptomatic and having neuropathies and a slipped disk. He told the court that if P. were returned to him, P. would have his own room and child care.

After hearing argument, the court noted that the final review hearing should have taken place six months after P.'s detention due to the child's young age. It found: (1) DCFS had provided reasonable services; (2) the parents had not substantially complied with the case plan; and (3) returning P. to the parents would place him at substantial risk of detriment to his physical and emotional well-being. It terminated reunification services and set the matter for a section 366.26 hearing. Father's timely writ petition followed.

DISCUSSION

I. DCFS Provided Reasonable Services

Father contends DCFS failed to provide reasonable reunification services. He complains that DCFS "sabotaged" the case plan "by giving family preservation [services] prematurely and stopping [them] abruptly during a very crucial time in individual counseling and conjoint therapy. Father also accuses the social worker of inserting statements and information in the September 24, 2010 status review report that were "out of context." We are not persuaded.

"The adequacy of reunification plans and the reasonableness of DCFS's efforts are judged according to the circumstances of each case. [Citation.] Moreover, DCFS must make a good faith effort to develop and implement a family reunification plan. [Citation.]" (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) In deciding whether reasonable services were provided, "[t]he applicable standard of review is sufficiency of the evidence." (*Id.* at p. 1346.)

Here, the record is replete with examples of the effort DCFS made to develop an appropriate reunification plan and to assist the parents in completing it. It provided referrals for parenting and anger management classes, individual and conjoint counseling, and drug testing. When the parents notified the social worker that they were having transportation problems, they were given bus passes. Father faults DCFS for prematurely beginning family preservation services and then abruptly canceling them. Although preservation services are generally intended for situations where the child has not been removed from parental custody (*In re Calvin P.* (2009) 178 Cal.App.4th 958, 963), Father does not explain how he was prejudiced, as he was provided reunification services from the beginning of the case. He asserts DCFS's decision to provide preservation services led to the termination of his therapy sessions, but he ignores the fact that he was provided with a new referral and eventually saw another therapist. Indeed, the new therapist recommended that P. be returned to Father. We fail to see any deficiency in the services DCFS provided.

Turning to Father's claim that the social worker's report was inaccurate and took matters out of context, we make two observations. First, despite testifying at the hearing, Father failed to contest any of the alleged inaccuracies in the report. We note Father does not claim he was unaware of the report's contents at the time of the hearing. Second, assuming the social worker incorrectly advised the court that the parents were frustrated with having to travel a long distance to visit P. and did not take interest in P.'s progress, any error was harmless. The court terminated reunification services because the parents had not substantially complied with the case plan and P. would face substantial risk of detriment if he were returned to their home. This was despite the fact that the parents received 16 months of reunification services, far in excess of the statutory requirement. (§ 361.5, subd. (a)(1) [when the child who is removed from the parents' physical custody is under three years of age, services "shall be provided for a period of six months from the dispositional hearing . . . , but no longer than 12 months from the date the child entered foster care . . . unless the child is returned to the home of the parent or guardian"].) Father fails to establish that the minor discrepancies in the report of which he complains had any effect on the court's determination.

The trial court's finding that Father received reasonable reunification services is supported by the evidence.

II. The Order Terminating Services Is Supported by Substantial Evidence

Father asserts the court's order terminating his reunification services is not supported by the evidence. We review the correctness of the order to determine if it is supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.) We conclude the order terminating reunification services was appropriate.

DCFS believed that the parent education and counseling components of the case plan were critical to ensuring P.'s return to a safe home environment. That belief was shared by the director of the program who provided parent education classes to Father and Mother. As far back as November 2009, the director told the social worker that given the severity of P.'s injuries and parental neglect, the basic parenting class Father

and Mother had attended did not provide them with the tools necessary to reunite with the child. Neither parent participated in a more advanced class. The director also strongly recommended counseling. Nonetheless, the parents waited over a year after P. was detained to begin individual counseling. Although it is true that by the time of the October 2010 review hearing, Father's therapist recommended that P. be returned to Father's custody, the court was properly concerned that the therapist had counseled Father for less than two months, had never seen Father and P. interact, and appeared unaware of the parents' other issues.

There is little question that notwithstanding which parent was responsible for inflicting P.'s injuries, if he returned home he faced substantial risk of injury unless the family environment was stable. The child sustained multiple injuries that indicate the abuse was ongoing. At the time of the review hearing, the parents' relationship was fraught with conflict. They argued constantly and by the time of the final review hearing, Mother had moved out. Father's attorney suggested that Father alone could provide a stable home. We disagree. According to Mother, he was verbally abusive. In addition, Father yelled at the family preservation worker who visited the home and discovered marijuana in the living room and cursed at the foster mother's daughter when he tried to reschedule a visit. Father's temper was also displayed at the review hearing. The transcript reveals that he interrupted the proceedings twice, accused DCFS and the court of being the cause of his losing custody of P., and stormed out of the courtroom. We can only wonder how severe Father's anger issues are when he showed an inability to control his emotions in a court of law. One thing is clear. Father's temper poses a barrier to his ability to provide a safe and peaceful environment for P.

There is also doubt that Father has the skills or the awareness to care for P. After P. was removed from the home, Father was not responsible for his care. As discussed, the parent education classes he completed did not provide the necessary training to enable him to reunify with P. By the time of the review hearing, over a year and a half had passed since P.'s detention. Still, Father had barely begun unmonitored visits, and they were terminated due to his positive drug tests and missed visits. Father's drug use,

whether prescribed or not, raises questions as to whether he has the awareness to care for an active toddler. The toxicologist noted that Father's cannabinoid level was very high and he also had opiate hydrocodone in his system. We find it disconcerting that despite the number and severity of the injuries P. suffered while he was in Father's home, Father had "no clue" his child was injured.

Finally, we observe, as the trial court did, that Father was unable to substantially comply with the case plan despite receiving almost a year of reunification services beyond the six months mandated by section 361.5, subdivision (a)(1). The trial court's finding that P. faced substantial risk of detriment if he were to return to Father's custody is supported by the evidence.

III. Father Did Not Receive Ineffective Assistance of Counsel

Father asserts that the court's order must be reversed due to his counsel's inadequate assistance. His claim is without merit. To establish counsel was ineffective, Father has the burden of showing that his counsel's representation fell below an objective standard of reasonableness under prevailing professional norms and that, but for counsel's unprofessional errors, there is a reasonable probability the outcome would have been different. (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 261.)

Father bases his claim on the fact that during the hearing, the court admonished counsel to stay within the issues. Father also cites the complaint he filed with the State Bar, wherein he alleged counsel was "inadequate, [disheveled], unorganized, [and] was unattached from the hearings." Notwithstanding the labels Father utilizes, he does not give one example of what counsel should have done differently. His attempt to establish counsel's failure to provide competent representation is wholly inadequate. We need not address the issue of prejudice.

IV. Father Failed to Demonstrate the Trial Court Was Biased

Father alleges the trial court "prejudged the case publicly prior to trial, joking about the case in court prior to issuing his decision." As proof, he cites two comments of

the court that are taken completely out of context. He also claims his attorney stated, "[The] Judge is joking about your case, it doesn't look good." The statement was not reported and Father did not provide a declaration from counsel. Whatever Father perceived with respect to the personal feelings of the bench officer, it is beyond dispute that his decision is supported by the evidence. Father's belated attempt to create an aura of bias is unavailing.

DISPOSITION

The petition for extraordinary writ is denied.

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SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.